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NARMADA BAI

v.

STATE OF GUJARAT AND OTHERS

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SUPREME COURT, INDIA
(2011) 5 SUPREME COURT CASES 79
P SATHASIVAM J
DR BS CHAUHAN J
[WRIT PETITION (CRL.) NO. 115 OF 2007†]

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8 APRIL 2011

[CONSTITUTIONAL LAW] *Constitution of India - Articles 21, 14, 32, 226 and 142 - Fair trial and investigation, Right to - Direction for investigation by an independent agency like CBI - Permissibility - When*

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there is improper investigation by State Police and high State police officials are involved, in order to do complete justice, direction for investigation by an independent and specialised agency like CBI, reiterated, is permissible - Rule of Law - Investigation by impartial agency (paras 27, 59 and 63 to 65)

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[CONSTITUTIONAL LAW] *Constitution of India - Articles 21, 14, 32, 226 and 142 - Fair trial and investigation, Right to - Fake encounter - Direction for investigation by an independent agency like CBI after filing of charge-sheet - When can be made - Relevant grounds and*

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considerations - Allegedly T being killed by State Police in a fake encounter as he was a material witness to abduction of one S (associate of T) and K (wife of S), CBI investigation regarding fake encounters of S and K already having being directed in Rubabbuddin Sheikh case, (2010) 2 SCC 200 - Held, to meet ends of justice and in public interest, CBI should be

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directed to take up the investigation, otherwise it will shake confidence of public - No matter how faithfully and honestly local police may carry out investigation in present case, same will lack credibility as allegations were directed against them - Justice must not only be done but must be seen to be done - If majesty of rule of law is to be upheld and if it is to be

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ensured that guilty are punished in accordance with law notwithstanding their status and authority which they might have enjoyed, it is desirable to entrust investigation to CBI - There is substantial material on record which makes it probable that prime motive of elimination of T was that he was a witness to abduction of S and K - Both oral and documentary

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evidence raise strong suspicion that encounter was fake and stage-managed as predicted by T prior to his death in a number of communications - Criminal Procedure Code, 1973, ss. 156, 157, 173(1), (8) and 220 (Paras 27, 59, 63 to 65, 71 and 72; and 5, 34, 38, 39 and 47 to 60)

[CONSTITUTIONAL LAW] *Constitution of India - Articles 32, 226 and 136 - CBI Investigation - Fake encounter - Connected fake encounter deaths of multiple victims - Observations made in earlier judgment when investigation handed over to CBI in respect of some only of the victims - Respondents in all writ petitions (being the same) adequately represented and heard before earlier judgment passed - Extent to which said earlier judgment binding when remaining writ petition coming up - T allegedly killed by State Police in fake encounter as he was a material witness to abduction of one S and K - Petition for CBI investigation in respect of death of T heard along with petition for CBI investigation into deaths of S and K - Supreme Court in Rubabbuddin case, (2010) 2 SCC 200, directing CBI investigation in respect of death of S and K and making certain observations in respect of death of T and role of T as material witness in killing of S and K, and a larger conspiracy which seemed to exist which is why S, K and T had been eliminated, etc. – Extent to which Rubabbuddin case binding when writ petition in respect of CBI investigation into killing of T coming up independently ie, this petition – In light of the fact that this petition came up for hearing with the other petition and the observations made in Rubabbuddin case, held, observations, directions, factual details, discussions and ultimate conclusions in Rubabbuddin case cannot be taken note of lightly and it is the duty of CBI to go into all details as directed by Supreme Court in Rubabbuddin case - Criminal Procedure Code, 1973, ss. 156 and 157 (Paras 34 to 39, 47 and 21)*

[CRIMINAL PROCEDURE] *Criminal Procedure Code, 1973 (India) - Sections 156, 157, 220, 173(1) and (8) - Authority that may investigate - Investigation in respect of more than one offence - CBI having investigated fake encounter of one S and K - Further investigation regarding fake encounter of one T (associate of S and material witness in S's case) - Definite case of CBI being that abduction of S and K and their subsequent murders as well as the murder of T being one series of acts, so connected together as to form the same transaction under s. 220 CrPC - All connected offences, held, should be investigated by same investigating agency (the agency being CBI in present case) - If connected offences are given to different agencies for investigation it may cause failure of justice not only in one case but in other trial as well (para 47)*

[CRIMINAL PROCEDURE] *Criminal Procedure Code, 1973 (India) - Sections 156, 157, 173(1) and (8) - Authority that may investigate - Accused if has any right to hearing in respect thereof - Alleged fake encounter having been committed by State Police persons, the accused police personnel, held, can have no say in the matter of authority that may investigate (paras 64 and 65)*

A *Rubabbuddin Sheikh v. State of Gujarat, (2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006*

Vineet Narain v. Union of India, (1996) 2 SCC 199 : 1996 SCC (Cri) 264

Union of India v. Sushil Kumar Modi, (1998) 8 SCC 661 : 1999 SCC (Cri) 84

B *Rajiv Ranjan Singh 'Lalan' (8) v. Union of India, (2006) 6 SCC 613 : (2006) 3 SCC (Cri) 125*

Hari Singh v. State of U.P., (2006) 5 SCC 733 : (2006) 3 SCC (Cri) 63

Aleque Padamsee v. Union of India, (2007) 6 SCC 171 : (2007) 3 SCC (Cri) 1

M.C. Mehta v. Union of India, (2008) 1 SCC 407 : (2008) 1 SCC (Cri)

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R.S. Sodhi v. State of U.P., 1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248

Ramesh Kumari v. State (NCT of Delhi), (2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678

Kashmeri Devi v. Delhi Admn., 1988 Supp SCC 482 : 1988 SCC (Cri) 864

D *Gudalure M.J. Cherian v. Union of India, (1992) 1 SCC 397;*

Punjab & Haryana High Court Bar Assn. v. State of Punjab, (1994) 1 SCC 616 : 1994 SCC (Cri) 455

Mohd. Anis v. Union of India, 1994 Supp (1) SCC 145 : 1994 SCC (Cri) 251, relied on

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[CONSTITUTIONAL LAW] *Constitution Of India - Articles 32, 21 and 14 - Monitoring of CBI investigation by Supreme Court - Scope - Held, generally, Supreme Court may not require further monitoring of case/investigation - However, parties at liberty to approach Supreme*

F *Court as required - Criminal Procedure Code, 1973, ss. 156 and 173*

Held:

Though after filing of charge-sheet in a court of competent jurisdiction, the Supreme Court can direct CBI investigation,

G further monitoring of the said investigation by the Supreme Court, however, comes to an end. It is the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused including matters falling within the scope of s. 173(8) CrPC. Thus, generally, the Supreme Court may not

H require further monitoring of the case/investigation. However, it is made clear that if any of the parties including CBI require any further direction, they are free to approach the Supreme Court by way of an application. (paras 68 and 70)

I *Vineet Narain v. Union of India, (1996) 2 SCC 199 : 1996 SCC (Cri) 264; M.C. Mehta (Taj Corridor Scam) v. Union of India, (2007) 1 SCC 110 : (2007) 1 SCC (Cri) 264, relied on*

Rubabbuddin Sheikh v. State of Gujarat, (2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006, distinguished on facts

[CONSTITUTIONAL LAW] *Constitution Of India - Articles 21, 22 and 32 - Police atrocities/Custodial violence or deaths - Fake encounter/ Custodial death - Compensation - CBI having been directed to investigate the case, petitioner permitted to approach trial court for compensation depending on result of investigation - Criminal Procedure Code, 1973, s. 357 (para 72)*

Writ petition allowed

Advocates who appeared in this case:

H.P. Raval, Additional Solicitor General, Tushar Mehta, Additional Advocate General, Ranjit Kumar, Ram Jethmalani, K.T.S. Tulsi and Jaideep Gupta, Senior Advocates (Huzefa A. Ahmadi, Ms Meenakshi Arora, Ms Hemantika Wahi, Pranav Diesh, Karan Kalia, Anish K. Gupta, Subramonium Prasad, Rajat Khattry, Maheen Pradhan, A.K. Sharma, Deepak Prakash, Biju P. Raman, Rajesh B., Ms Malini Poduval, Bhupender Yadav, S.S. Shamshery, Ms Debaleena Kilikdar, B.R. Barik, R.C. Kohli, Gp. Capt. Karan Singh Bhati, Ms Jyoti Upadhyay, Rasid Khan, Ms Padmalakshmi Nigam, Harsh N. Parekh, Ms Sonam Anand and S.N. Terdal, Advocates) for the appearing parties.

Chronological list of cases cited on page(s)

Rubabbuddin Sheikh v. State of Gujarat (2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006

M.C. Mehta v. Union of India (2008) 1 SCC 407 : (2008) 1 SCC (Cri) 216

Aleque Padamsee v. Union of India (2007) 6 SCC 171 : (2007) 3 SCC (Cri) 1

M.C. Mehta (Taj Corridor Scam) v. Union of India (2007) 1 SCC 110 : (2007) 1 SCC (Cri) 264

Rajiv Ranjan Singh 'Lalan' (8) v. Union of India (2006) 6 SCC 613 : (2006) 3 SCC (Cri) 125

Hari Singh v. State of U.P. (2006) 5 SCC 733 : (2006) 3 SCC (Cri) 63

Ramesh Kumari v. State (NCT of Delhi) (2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678

Union of India v. Sushil Kumar Modi (1998) 8 SCC 661 : 1999 SCC (Cri) 84

Vineet Narain v. Union of India (1996) 2 SCC 199 : 1996 SCC (Cri) 264

Punjab & Haryana High Court Bar Assn. v. State of Punjab (1994) 1 SCC 616 : 1994 SCC (Cri) 455

Mohd. Anis v. Union of India 1994 Supp (1) SCC 145 : 1994 SCC (Cri) 251

R.S. Sodhi v. State of U.P. 1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248

Gudalure M.J. Cherian v. Union of India [1992] 1 SCC 397

Kashmeri Devi v. Delhi Admn 1988 Supp SCC 482 : 1988 SCC (Cri) 864

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JUDGMENT

P Sathasivam J:

[1] Narmada Bai, the petitioner herein, mother of Tulsiram Prajapati, the deceased, who, according to her, was killed on 27 December 2006/28 December 2006 in a fake encounter by respondents 6 to 19, who are the officials of Gujarat and Rajasthan Police, somewhere on the road going from Ambalimal to Sarhad Chhapri, has filed the above writ petition under art. 32 of the Constitution of India praying for issuance of a writ of *mandamus* or in the nature thereof or any other writ, order or direction directing the Central Bureau of Investigation (in short "CBI") to register a first information report (in short "FIR") and investigate into the fake encounter killing of her son and submit its report to this court. In the same petition, she also prayed for compensation for the killing of her son in a fake encounter thereby causing gross violation of arts. 21 and 22 of the Constitution.

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Case Of The Writ Petitioner

[2] According to the petitioner, she is 55 year old illiterate widow. Her younger son had been done away by respondents 6-19 in a fake encounter with the ulterior intent to shield themselves in the investigation emanating under the directions of this court in *Rubabbuddin Sheikh v. State of Gujarat*[1]. She came to know through local persons about the fake encounter and killing of Sohrabuddin and his wife Kausarbi and the directions of this court in that case. On being informed about the said incident, she approached this court for directions to register an FIR into the fake encounter killing of her son Tulsiram Prajapati and investigation by an independent agency, like CBI and for submission of its report to this court for further action. According to the petitioner, the fake encounter killing of her son is directly connected to the case of Sohrabuddin and his wife Kausarbi as he would have been a material witness to the said killings.

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[3] It is further stated that her son Tulsiram Prajapati while lodged in Central Jail, Udaipur, had addressed a letter dated 11 May 2006 to the Collector, Udaipur informing him about the life-threatening attack carried out on him in Udaipur Central Jail

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1. (2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006.

on 25 March 2006, when he was beaten up with iron rods and lathis by the co-prisoners. He expressly wrote that there was conspiracy to kill him along with two others and also named the persons who were behind the conspiracy and requested that the incident be investigated and his life be protected. Thereafter, on 18 May 2006, the deceased also addressed a letter to the Chairman, National Human Rights Commission (in short "NHRC") alleging that there was conspiracy among the police officials of Gujarat, Rajasthan, Maharashtra, etc. to do away with him in a fake encounter by cooking up a false story of running away from custody. In the said letter, the deceased specifically requested that his security be ensured whenever he is taken on remand. In the same letter, he also mentioned that the Gujarat Crime Branch and the Anti-Terrorist Squad (in short "ATS") were very notorious for staging fake encounters. NHRC acknowledged the receipt of the said letter and forwarded a copy to the Superintendent of Police, Udaipur, Rajasthan *vide* letter dated 22 June 2006.

[4] Thus, from March 2006, the deceased had been expressing serious apprehensions and threat to his life at the hands of the police. The deceased had reasons to believe that Mr Dinesh Kumar, Superintendent of Police, respondent 8, had taken a huge sum of money from the marble traders and dealers in Rajasthan with the assurance that he would do away with him in a fake encounter. Before he being interrogated by Ms Geeta Johri, an officer investigating the matter of fake encounter killing of Sohrabuddin and his wife Kausarbi, in the night intervening 27 December 2006/28 December 2006, Tulsiram Prajapati was done away in a fake encounter by respondents 6-19.

[5] Quoting from certain newspaper reports, more particularly, The Times of India dated 29 December 2006, the petitioner has alleged that her son was being escorted by Udaipur (Rajasthan) Police from Ahmedabad to Udaipur in a train. When the train was passing through Himatnagar-Shymlaji stretch, the deceased sought permission to go to the toilet. The policemen escorted him to the toilet where two of his accomplices disguised as passengers attacked the policemen by throwing chilli powder in their eyes. When the policemen called for the other members of the escort party, the goons fired at them and jumped off the moving train. In response, the police opened fire but the accused fled in the cover of darkness after shooting back at the police.

[6] Pursuant to such alleged fleeing of Tulsiram Prajapati from police custody, Mr Dinesh Kumar, SP, Udaipur called Mr Vipul Agarwal, SP, Banaskantha and informed him of the same. Thereafter, local police of Banaskantha headed by Mr Vipul Agarwal under direct supervision of Mr D.G. Vanzara, Range DIG, swung into action and registered an FIR being Crime Register No. 115 of 2006 at Ambaji Police Station, Banaskantha, on 28 December 2006 at 0800 hrs claiming that Tulsiram Prajapati had been killed in an encounter.

[7] It is further alleged that when patrolling was carried out, three persons tried to stop one matador van but the vehicle did not stop there. It has also been alleged that a police jeep of Mr A.A. Pandya, SI was coming behind the matador and the said three persons tried to stop it. On stopping the police jeep, Mr Narayansinh Fatehsinh Chauhan, ASI recognised one of the three persons in the light of the jeep as the absconding Tulsiram Prajapati. On seeing that, the deceased took out a weapon kept in the nylon belt on his waist and fired which hit the left side of the mudguard of the police jeep and ran away in the darkness. While running, they fired at the police party in which one bullet hit at the left shoulder of Shri A.A. Pandya, SI. It is alleged that in self-defence Shri A.A. Pandya fired two rounds from his service revolver and Mr Narayansinh Fatehsinh Chauhan and Mr Yuddharamsinh Nathusinh Rajput, Rajasthan Police Constables also fired from their weapons. On account of the firing by the police party, bullets hit Tulsiram Prajapati and he fell down on roadside and the other two persons ran away and could not be traced. Thereafter, he was taken to Ambaji Cottage Hospital where he was declared dead by the doctor on duty.

[8] It is the further case of the petitioner that the deceased being a key eyewitness to the murder of Sohrabuddin and his wife Kausarbi, the team of Mr D.G. Vanzara and others planned to do away with him to avoid his interrogation by Ms Geeta Johri, Inspector General of Police. The aforesaid facts create a strong suspicion on the conduct of respondents 6 to 19 and the petitioner has every reason to believe that her son Tulsiram Prajapati has been killed by them in a fake encounter. She also alleged that the respondent-accused officers enjoy powerful positions in their respective State police and are trying to obstruct further inquiry into the fake encounter killing of her son, who was

a material witness in the case of fake encounter of Sohrabuddin and his wife Kausarbi. Hence, the petitioner has preferred this petition before this court praying for direction to CBI to register an FIR and investigate the case.

Stand Of The State Of Gujarat, Respondent 1

[9] Shri I.M. Desai, Deputy Inspector General of Police, CID (Crime), Gujarat State filed an affidavit wherein it was stated that the present petition under art. 32 of the Constitution is not maintainable as the case registered in respect of death of the petitioner's son in police firing on 28 December 2006 was under investigation. Writ Petition (Crl.) No. 6 of 2007 being a *habeas corpus* petition was entertained by this court as an exceptional case and, therefore, the same cannot be cited as a precedent.

[10] It was further stated in the said affidavit that Tulsiram Prajapati was a dreaded inter-State criminal and was also known as Tulsiram Prajapati alias Prafull alias Samir, son of Ganga Ram Prajapati involved in 21 criminal cases and he was killed on 28 December 2006 in police firing after escaping from police custody. In respect of the same, an FIR was registered in Ahmedabad Railway Police Station of Gujarat *vide* CR No. 294 of 2006 under ss. 307, 224, 225 and 34 of the Penal Code 1860 (in short "IPC") and ss. 25(1-A) and (1-B) of the Arms Act 1959 and s. 135 of the Bombay Police Act, 1951.

[11] According to the State, after escaping from the police custody, Tulsiram Prajapati was again confronted by Gujarat Police and Rajasthan Police and was killed in police firing for which an FIR was registered in Ambaji Police Station *vide* CR No. 115 of 2006 dated 28 December 2006 under ss. 307, 427, 34 IPC and s. 25(1-C) of the Arms Act 1959 and s. 135 of the Bombay Police Act, 1951. Since the cases in respect of the above two incidents had already been registered in the police stations, there is no need to register a fresh case as claimed by the petitioner.

[12] It was further stated by Shri I.M. Desai that Tulsiram Prajapati was not a material witness in the case of Sohrabuddin. He also denied that any such incident had taken place within the premises of Udaipur Central Jail as claimed by the petitioner on 25 March 2006 but there was a quarrel among the prisoners on 24 March 2006 in the court lock-up for which a criminal case was registered at Bhopalpura Police Station in CR No. 131 of 2006 under ss. 341, 323, 506 and 34 IPC.

[13] As regards the complaint made to NHRC, investigation carried out so far revealed that no such conspiracy amongst the police officers of Maharashtra, Gujarat, Madhya Pradesh and Rajasthan has come on record. The deceased also never showed any apprehension to the petitioner about danger to his life from marble dealers or police officers of Udaipur. The petitioner's claim about Tulsiram Prajapati's apprehension to his life is at the most hearsay and based on extraneous considerations.

[14] The claim that the deceased Tulsiram Prajapati was a highly inconvenient witness for respondents 6-19 is without substance as respondent 10, Mr V.L. Solanki, an inquiry officer, has stated in respect of alleged killing of Sohrabuddin that during preliminary enquiry there was no link between Tulsiram Prajapati and the death of Sohrabuddin and his wife Kausarbi in an encounter. The same view has been expressed by Ms Geeta Johri, IGP under whose direct supervision the case relating to Sohrabuddin was investigated. The "third person" allegedly present at the time of abduction of Sohrabuddin and Kausarbi was Kalimuddin and not Tulsiram Prajapati.

[15] In the subsequent affidavit dated 19 August 2010, Dashrathbhai R. Patel, Under-Secretary, Government of Gujarat, Home Department has stated that the State CID (Crime) has filed a charge-sheet which is the subject-matter of the present writ petition. It is the consistent stand of the State that the encounter killing of Tulsiram Prajapati [subject-matter of writ petition (Crl.) No. 115 of 2007] has nothing to do with the killing of Sohrabuddin and Kausarbi [which was the subject-matter decided by this Court in Writ Petition (Crl.) No. 6 of 2007].

Stand Of Mr Amit Shah, Respondent 2

[16] The present writ petition is an abuse of the process of law by/at the behest of political party controlling CBI.

[17] The investigation in a criminal case normally takes place in accordance with the procedure prescribed under the Code of Criminal Procedure (in short "CrPC") and by the normal investigating agency prescribed. The constitutional court can direct deviation from such statutorily prescribed method of investigation and direct an outside agency like CBI to step in and investigate an offence only in extraordinary circumstances and in the rarest

of rare cases. The petitioner has not led factual foundation of facts to hold that the present case is one of the rarest of rare cases which requires deviation from the statutorily prescribed mode of investigation.

[18] On perusal of both the investigations and charge-sheets which are filed in both the offences, it is seen that there is no credible evidence to support the view that Tulsiram Prajapati was that "third person" and the evidence which CBI is relying on is clearly fabricated being based on the unreliable statements of witnesses. On the other hand all available evidence points to the fact that the "third person" could only be Kalimuddin alias Naimuddin who is under the protection of Andhra Pradesh Police. CBI is seeking to take over Tulsiram Prajapati's encounter case only to fabricate the evidence and to destroy the charge-sheet filed by Gujarat Police in Tulsiram Prajapati's case. The status report filed by CBI in Sohrabuddin's case that Tulsiram Prajapati was the "third person" is a blatant lie. Though there is no link between the two and yet CBI is attempting to fabricate a link that does not exist. Inasmuch as CBI which has lost all its credibility as an independent agency and is being used by the political party in power in the Central Government, in the absence of any extraordinary circumstances having been shown by the petitioner in the petition no direction need be issued for handing over the investigation to CBI and prayed for dismissal of the writ petition.

Stand Of CBI, Respondent 21

[19] The investigation conducted in RC No. 4(S) of 2010, Special Crime Branch, Mumbai, as per the directions of this court in its order dated 12 January 2010[1], *vide* Writ Petition (Crl.) No. 6 of 2007 revealed that the alleged fake encounter of Tulsiram Prajapati on 28 December 2006 was done in order to eliminate him as he was the key witness in the criminal conspiracy of the abduction and killing of Sohrabuddin and Kausarbi by powerful and influential accused persons. The investigation further revealed that the deceased knew that his death was imminent at the hands of Gujarat Police in connivance with Rajasthan Police as he was the prime witness to the said case.

1. *Rubabbuddin Sheikh v. State of Gujarat*, (2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006.

[20] The investigation also revealed that Tulsiram Prajapati was brought to Ahmedabad on 28 November 2006 and 12 December 2006 in connection with Case No. 1124 of 2004 in JM Court No. 13, Ahmedabad, along with co-accused Md. Azam and around 50 police commandos accompanied the escort party, whereas on 25 November 2006, Tulsiram Prajapati was brought alone on police escort by Rajasthan Police from Udaipur Jail when less than five policemen accompanied him. After the orders of this court for the investigation by this agency, it emerged that police officials of ATS, Ahmedabad were involved in the abduction and killing of Sohrabuddin and his wife Kausarbi.

[21] The murder of Tulsiram Prajapati took place on 28 December 2006, case was registered on 28 December 2006 and Gujarat CID commenced investigation on 22 March 2007. However, even after a lapse of three years, no action was taken against any of the accused. As directed by this court, only on the investigation of Tulsiram Prajapati's case, the "larger conspiracy" would be established and the mandate and tasks assigned by this court to CBI would be accomplished both in letter and spirit towards the goal of a fair trial, upholding the rule of law. If Tulsiram Prajapati's fake encounter case is not transferred to CBI for investigation, it may lead to issue estoppel or *res judicata* against the prosecution.

Stand Of The Other Respondents

[22] As far as the officials of Gujarat State Police are concerned, they reiterated the stand taken by the State. Mr Dinesh Kumar, SP, Udaipur, Rajasthan, respondent 8 has filed a separate counter-affidavit denying all the allegations made by the petitioner and taking the same stand as that of the State of Gujarat and ultimately prayed for dismissal of the writ petition.

[23] In the light of the above pleadings, we heard Mr Huzefa A. Ahmadi, learned counsel for the writ petitioner; Mr Ranjit Kumar, learned Senior Counsel for the State of Gujarat (respondent 1); Mr Ram Jethmalani, learned Senior Counsel for Amit Shah (respondent 2); Mr K.T.S. Tulsi, learned Senior Counsel for CBI; Mr Deepak Prakash, learned counsel for respondent 8; Mr Jaideep Gupta, learned Senior Counsel for respondent 6; Gp. Capt. Karan Singh Bhati, learned counsel for respondents 12, 13 and 14 and Mr H.P. Raval, learned ASG for the Union of India.

[24] The main grievance of the petitioner is that her deceased son Tulsiram Prajapati being a key witness to the murder of Sohrabuddin and his wife Kausarbi, the team of Mr D.G. Vanzara, DIG and other officers of the State police planned to do away with him to avoid the interrogation by Ms Geeta Johri, IGP. The petitioner had also strong suspicion on the conduct of respondents 6-19 and has every reason to believe that her son had been killed by them in a fake encounter. It is also the apprehension of the petitioner that since the respondent-accused police officers enjoy powerful position in their respective States and they are trying to obstruct further inquiry in the matter, prayed for entrusting the investigation to a specialised independent agency like CBI.

[25] Mr Ranjit Kumar, learned Senior Counsel for the State of Gujarat and Mr Ram Jethmalani, learned Senior Counsel for Mr Amit Shah, respondent 2, who, at the relevant time was the Home Minister of the State, vehemently objected the claim of the petitioner and by placing several materials submitted that inasmuch as after proper investigation the State police has filed the charge-sheet, there is no need for further investigation by CBI at this stage. They further submitted that any such direction at this stage would delay the entire prosecution.

Key Issues

[26] Keeping the above submissions in mind, we have to first find out:

(A) Whether after filing of the charge-sheet by the State agency, the court is precluded from appointing any other independent specialised agency like CBI to go into the same issues if the earlier investigation was not done as per the established procedure; and

(B) Subject to the answer relating to the issue raised in (A), whether the petitioner has made out a case for entrusting the investigation to CBI.

A **Analysis As To Issue (A)**

[27] The first issue ie, Issue (A) as in the case on hand also arose in *Rubabbuddin Sheikh*[1]. The factual details therein will be discussed in the later paragraphs. With regard to the similar
B objection as to further investigation by CBI, this court considered the following cases:

(i) *Vineet Narain v. Union of India*[2],

(ii) *Union of India v. Sushil Kumar Modi*[3],

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(iii) *Rajiv Ranjan Singh 'Lalan' (8) v. Union of India*[4],

(iv) *Hari Singh v. State of U.P.*[5],

(v) *Aleque Padamsee v. Union of India*[6],

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(vi) *M.C. Mehta v. Union of India*[7],

(vii) *R.S. Sodhi v. State of U.P.*[8],

(viii) *Ramesh Kumari v. State* (NCT of Delhi)[9],

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(ix) *Kashmeri Devi v. Delhi Admn.*[10],

(x) *Gudalure M.J. Cherian v. Union of India*[11], and

(xi) *Punjab & Haryana High Court Bar Assn. v. State of Punjab*[12]

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and concluded in paras 60-61 as under: (*Rubabbuddin Sheikh* case[1], SCC pp. 216-17).

G 1. *Rubabbuddin Sheikh v. State of Gujarat*, (2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006.

2. (1996) 2 SCC 199 : 1996 SCC (Cri) 264.

3. (1998) 8 SCC 661 : 1999 SCC (Cri) 84.

4. (2006) 6 SCC 613 : (2006) 3 SCC (Cri) 125.

H 5. (2006) 5 SCC 733 : (2006) 3 SCC (Cri) 63.

6. (2007) 6 SCC 171 : (2007) 3 SCC (Cri) 1.

7. (2008) 1 SCC 407 : (2008) 1 SCC (Cri) 216.

8. 1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248.

I 9. (2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678.

10. 1988 Supp SCC 482 : 1988 SCC (Cri) 864.

11. (1992) 1 SCC 397.

12. (1994) 1 SCC 616 : 1994 SCC (Cri) 455.

> 60. Therefore, in view of our discussions made hereinabove, it is difficult to accept the contentions of Mr Rohatgi, learned Senior Counsel appearing for the State of Gujarat that after the charge-sheet is submitted in the court in the criminal proceeding it was not open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any independent agency. Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge-sheet is submitted, the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI.
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> 61. Keeping this discussion in mind, that is to say, *in an appropriate case, the court is empowered to hand over the investigation to an independent agency like CBI even when the charge-sheet has been submitted,* we now deal with the facts of this case whether such investigation should be transferred to the CBI Authorities or any other independent agency in spite of the fact that the charge-sheet has been submitted in court. On this ground, we have carefully examined the eight action-taken reports submitted by the State police authorities before us and also the various materials produced and the submissions of the learned counsel for both the parties. (emphasis added)

It is clear that in an appropriate case, particularly, when the court feels that the investigation by the State police authorities is not in the proper direction as the high police officials are involved, in order to do complete justice, it is always open to the court to hand over the investigation to an independent and specialised agency like CBI.

[28 In the light of the above principles, now let us consider the second Issue (B) *viz.* whether the investigation relating to the encounter killing of Tulsiram Prajapati should be transferred to CBI in spite of the fact that the charge-sheet has been submitted in the court by the State police.

[29] It is the specific stand of the writ petitioner that while considering the grievance of Rubabbuddin Sheikh about the death of his brother Sohrabuddin in a fake encounter, the present petitioner, mother of Tulsiram Prajapati also filed Writ Petition

A (Crl.) No. 115 of 2007 and, the same was tagged along with Writ Petition (Crl.) No. 6 of 2007 which was filed by the brother of Sohrabuddin. The cause-title of the case *vide Rubabbuddin Sheikh v. State of Gujarat*[1] shows that Writ Petition (Crl.) No. 115 of 2007 was heard along with Writ Petition (Crl.) No. 6 of 2007.
B Though at the end of the judgment, this court directed that Writ Petition (Crl.) No. 115 of 2007 be listed after eight weeks before an appropriate Bench.

[30] As pointed out by the learned counsel for the petitioner and
C CBI, the said judgment records that there is strong suspicion that the "third person" picked up with Sohrabuddin was Tulsiram Prajapati. It was also observed that call records of Tulsiram Prajapati were not properly analysed and there was no justification for the then investigating officer, Ms Geeta Johri to have walked
D out of the investigation pertaining to Tulsiram Prajapati. In para 65, the following observations are relevant: (*Rubabbuddin Sheikh case*[1], SCC p. 217)

> 65. It also appears from the charge-sheet that it identifies the third person who was taken to Disha farm as Kalimuddin. But it does
E not contain the details of what happened to him once he was abducted. The possibility of the third person being Tulsiram Prajapati cannot be ruled out, although the police authorities of the State had made all possible efforts to show that it was not Tulsiram. *In our view, the facts surrounding his death evokes strong*
F *suspicion that a deliberate attempt was made to destroy a human witness.* (emphasis added)

[31] Apart from the above conclusion, after analysing several action-taken reports filed by the State and various circumstances and in view of the involvement of the high police officials of the
G State in the crime therein, this court in *Rubabbuddin Sheikh case*[1] directed CBI to investigate all the aspects of the case relating to the killing of Sohrabuddin and his wife Kausarbi including the possibility of a "larger conspiracy". Pursuant to the said direction, CBI investigated the cause of death of Sohrabuddin and his wife
H Kausarbi. CBI, in their counter-affidavit, has specifically stated that as per their investigation Tulsiram Prajapati was a key witness in the murder of Sohrabuddin and he was the "third person" who accompanied Sohrabuddin from Hyderabad and killing of Tulsiram Prajapati was a part of the same conspiracy. It was further stated
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1. (2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006.

that all the records qua Tulsiram Prajapati's case were crucial to unearth the "larger conspiracy" regarding Sohrabuddin's case which despite being sought were not given by the State of Gujarat.

[32] As against the assertion of the writ petitioner and the stand of CBI, Mr Ranjit Kumar and Mr Ram Jethmalani, learned Senior Counsel appearing for respondents 1 and 2 respectively cited several instances and relied on certain materials to show that inquiry by CBI is not warranted. They are:

(i) Tulsiram Prajapati, as mentioned in the petition and in the prayer was the sharp shooter of Sohrabuddin. He was the co-accused of Sohrabuddin in Hamid Lala's case and was taken into custody only on 29 November 2005. Obviously, he had been absconding till then. In other words, he had been absconding for nearly a year before he was arrested. After his arrest, he was lodged in Central Jail, Udaipur. While in custody, he and two of his jail mates addressed a letter dated 11 May 2006 to the Collector, Udaipur informing him about the attack carried out on them in the jail premises and that they were badly injured. He did not even express a suspicion about anyone who planned the attack on him. He named seven persons who had actually participated in the attack. In the said letter, he did not allege or even suspect that this dangerous assault in jail had anything to do with the Sohrabuddin-Kausarbi fake encounter case or that he was being eliminated because he was a witness of the murder of either Sohrabuddin or his wife.

(ii) On 18 May 2006, Tulsiram Prajapati addressed another letter to the Chairman, NHRC, New Delhi. In this letter again, he did not allege that he was an eyewitness and that is why he was afraid of being eliminated. He, however, did admit that he is an accused in serious cases in the State of Maharashtra, Gujarat, Madhya Pradesh and Rajasthan. What he alleged was that there was a conspiracy among the police officers of these States to knock him out. Even NHRC did not draw any inference. Ultimately, Tulsiram Prajapati was killed at about 8am on 28 December 2006. The scene of offence was within the jurisdiction of Ambaji Police Station in District Banaskantha of Gujarat. An FIR of this incident was registered on the same day within 15 minutes.

(iii) Till his death, no evidence had emerged that he had accompanied Sohrabuddin about 13 months back ie, on 25 November 2005 to Gujarat where the encounter took place on the outskirts of Ahmedabad.

(iv) The order of this court in *Rubabbuddin Sheikh*[1] has been made under unfortunate circumstances without hearing anybody except the State of Gujarat. It is the Union of India and the *amicus curiae* who is a law officer of the Union of India that wanted the investigation into Sohrabuddin's case be transferred to CBI which had been fully investigated by the State police and resulted in a charge-sheet as far back as on 16 July 2007. The main ground on which faults were found was that the investigation was the alleged failure to identify the Andhra Pradesh police officers and others who participated in the abduction of the couple from Hyderabad to Gujarat leading eventually to their being killed.

(v) Apart from the 13 accused who had originally been charge-sheeted by Gujarat Police as a result of their investigation, CBI, on 23 July 2010, added the then Home Minister of Gujarat as accused 16 and involved him in Sohrabuddin's murder case.

(vi) CBI submitted two reports – Status Report No. 1 on 30 July 2010 and a week thereafter, they filed the charge-sheet. In pursuance of the charge-sheet, accused 16, Amit Shah was arrested on 25 July 2010 and released on bail by the High Court of Gujarat on 29 October 2010. The order releasing him on bail is the subject-matter of challenge in SLP (Crl.) No. 9003 of 2010. Status Report No. 1, filed by CBI before the Bench on 30 July 2010 informed the court that Tulsiram Prajapati was abducted along with Sohrabuddin and Kausarbi and he was handed over to Rajasthan Police. There is no explanation as to why he was not killed along with Kausarbi or Sohrabuddin. After all, both were arch-criminals jointly involved in several murderous activities all over the country. When he was spared for 13 months and then disposed of during this time he had every opportunity to disclose that he was an eyewitness of the Sohrabuddin murder case.

1. *Rubabbuddin Sheikh v. State of Gujarat,* (2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006.

[33] By placing all the above details and further materials both the Senior Counsel submitted: A

(i) In filing the charge-sheet by Gujarat Police the State has granted the prayer which Narmada Bai has made in her writ petition. B

(ii) The persons whom she has implicated have all been charge-sheeted by Gujarat Police.

(iii) The conduct of CBI does not inspire any confidence in this case. C

It has become a party to a political conspiracy.

(iv) In Status Report Nos. 1 and 2 filed by CBI and submitted before the other Bench, they have already reported to the court that the Sohrabuddin couple on their fateful journey from Hyderabad to Gujarat were accompanied by a "third person" and that "third person" was Tulsiram Prajapati. This is a dishonest finding based upon some fabricated circumstances which are capable of being easily demolished. D E

(v) The order dated 12 January 2010 in *Rubabbuddin Sheikh*[1] is contrary to binding authorities and no credence or value can in law be assigned to the two status reports. The very anxiety on the other side that this should be handed over to CBI creates a serious apprehension about the impartiality and independence of this agency. F

Analysis As To Issue (B)

[34] Inasmuch as the present writ petition is having a bearing on the decision of the writ petition filed by Rubabbuddin Sheikh and also the claim of the petitioner, the observations made therein, particularly, strong suspicion about the "third person" accompanying Sohrabuddin, it is but proper to advert to factual details, discussion and ultimate conclusion of this court in *Rubabbuddin Sheikh case*[1]. G H

[35] Acting on a letter written by Rubabbuddin Sheikh to the Chief Justice of India about the killing of his brother Sohrabuddin Sheikh in a fake encounter and disappearance of his sister-in-law I

1. *Rubabbuddin Sheikh v. State of Gujarat,* (2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006.

A Kausarbi at the hands of the Anti-Terrorist Squad (ATS), Gujarat Police and Rajasthan Special Task Force (RSTF), the Registry of this Court, on 21 January 2007, forwarded the letter to the Director General of Police, Gujarat for necessary action. It is further seen that after six months, the Director General of Police,
B Gujarat directed Ms Geeta Johri, Inspector General of Police (Crime), to inquire about the facts stated in the letter. A case was registered as Enquiry No. 66 of 2006 and from 11 September 2006 to 22 January 2007, four interim reports were submitted by Mr V.L. Solanki, Police Inspector, working under Ms Geeta Johri.
C In Writ Petition No. 6 of 2007, Rubabbuddin Sheikh prayed for direction for investigation by CBI into the alleged abduction and fake encounter of his brother Sohrabuddin by the Gujarat Police Authorities and also prayed for registration of an offence and investigation by CBI into the alleged encounter of one Tulsiram
D Prajapati, a close associate of Sohrabuddin, who was allegedly used to locate and abduct Sohrabuddin and his wife Kausarbi, and was thus a material witness against the police personnel. He also prayed for production of Kausarbi, his sister-in-law. After going through various reports, arguments of the counsel for the
E writ petitioner and the State of Gujarat as well as the Solicitor General for India, who appeared as *amicus curiae*, this court disposed of the writ petition by entrusting the investigation to CBI. Even before the said Bench, such move was strongly resisted by the State through their Senior Counsel Mr Mukul Rohatgi.

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[36] Mr Ram Jethmalani, learned Senior Counsel appearing for respondent 2 in the present writ petition vehemently submitted that the entire discussion and the ultimate conclusion in *Rubabbuddin Sheikh case*[1] is unacceptable and no reliance needs to
G be placed on it. He also submitted that respondent 2 and other police officials were not heard by the said Bench before ordering fresh investigation by CBI.

[37] It is true that in the said writ petition, on behalf of the respondents, the Bench heard only the counsel for the State of
H Gujarat, however, it is not the case of anyone that the State was not given adequate opportunity before the said Bench. As said earlier, in fact, the State was represented by Mr Mukul Rohatgi,

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1. *Rubabbuddin Sheikh v. State of Gujarat,* (2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006.

reputed Senior Counsel and he put forth all relevant materials highlighting the stand of the State. Inasmuch as all the police officials of the State of Gujarat including respondent 2 in the present writ petition were part of the State in *Rubabbuddin Sheikh case*[1], we are of the view that it cannot be said that the same is not applicable to the case on hand.

[38] The following conclusions in *Rubabbuddin Sheikh case*[1] are relevant:

> 53. It is an admitted position in the present case that the accusations are directed against the local police personnel in which the high police officials of the State of Gujarat have been made the accused. Therefore, it would be proper for the writ petitioner or even the public to come forward to say that if the investigation carried out by the police personnel of the State of Gujarat is done, the writ petitioner and their family members would be highly prejudiced and the investigation would also not come to an end with proper finding and if investigation is allowed to be carried out by the local police authorities, we feel that all concerned including the relatives of the deceased may feel that investigation was not proper and in that circumstances it would be fit and proper that the writ petitioner and the relatives of the deceased should be assured that an independent agency should look into the matter and that would lend the final outcome of the investigation credibility however faithfully the local police may carry out the investigation, particularly when the gross allegations have been made against the high police officials of the State of Gujarat and for which some high police officials have already been taken into custody.
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> 54. It is also well known that when police officials of the State were involved in the crime and in fact they are investigating the case, it would be proper and interest of justice would be better served if the investigation is directed to be carried out by the CBI Authorities, in that case CBI Authorities would be an appropriate authority to investigate the case. (SCC pp. 214-15, paras 53-54)
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> 60. Therefore, in view of our discussions made hereinabove, it is difficult to accept the contentions of Mr Rohatgi, learned Senior Counsel appearing for the State of Gujarat that after the charge-sheet is submitted in the court in the criminal proceeding it was not open for this Court or even for the High Court to direct

1. *Rubabbuddin Sheikh v. State of Gujarat,* (2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006.

A investigation of the case to be handed over to CBI or to any independent agency. Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge-sheet is submitted, the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI.

C 61. Keeping this discussion in mind, that is to say, in an appropriate case, the court is empowered to hand over the investigation to an independent agency like CBI even when the charge-sheet has been submitted, we now deal with the facts of this case whether such investigation should be transferred to the CBI Authorities or any other independent agency in spite of the D fact that the charge-sheet has been submitted in court. …

62. From a careful examination of the materials on record including the eight action-taken reports submitted by the State police authorities and considering the respective submissions of the learned Senior Counsel for the parties, we are of the view E that there are large and various discrepancies in such reports and the investigation conducted by the police authorities of the State of Gujarat and also the charge-sheet filed by the State investigating agency cannot be said to have run in a proper direction. It appears from the charge-sheet itself that it does not reveal the F identity of police personnel of Andhra Pradesh even when it states that Sohrabuddin and two others were picked up by Gujarat Police personnel, accompanied by seven personnel of Hyderabad Police. It also appears from the charge-sheet that Kausarbi was taken into one of the two Tata Sumo jeeps in which these police personnel accompanied the accused. They were not even among G the people who were listed as accused. Mr Gopal Subramanium, Additional Solicitor General for India (as he then was) was justified in making the comment that an honest investigating agency cannot plead their inability to identify seven personnel of the police force of the State. (SCC pp. 216-17, paras 60-62)

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65. It also appears from the charge-sheet that it identifies the third person who was taken to Disha farm as Kalimuddin. But it does not contain the details of what happened to him once he was abducted. The possibility of the third person being Tulsiram Prajapati cannot be ruled out, although the police authorities or the I State had made all possible efforts to show that it was not Tulsiram. In our view, the facts surrounding his death evokes strong suspicion that a deliberate attempt was made to destroy a human witness.

> 68. From the above factual discrepancies appearing in the eight action-taken reports and from the charge-sheet, we, therefore, feel that the police authorities of the State of Gujarat had failed to carry out a fair and impartial investigation as we initially wanted them to do. It cannot be questioned that the offences the high police officials have committed were of grave nature which needs to be strictly dealt with. (SCC pp. 217-18, paras 65 & 68)

After arriving at such conclusions, the Bench directed CBI to investigate all aspects of the case relating to the killing of Sohrabuddin and his wife Kausarbi including the alleged possibility of a "larger conspiracy".

[39] It is clear that the above judgment records that there was a strong suspicion that the "third person" picked up with Sohrabuddin was Tulsiram Prajapati. It was also observed that the call records of Tulsiram were not properly analysed and there was no justification for the then Investigating Officer Ms Geeta Johri to have walked out of the investigation pertaining to Tulsiram Prajapati. The court had also directed CBI to unearth "larger conspiracy" regarding Sohrabuddin's murder. In such circumstances, we are of the view that those observations and directions cannot lightly be taken note of and it is the duty of CBI to go into all the details as directed by this court.

[40] Countering the stand of the petitioner, CBI and the Union of India, the State and other respondents projected the case relating to Navrangpura which took place on 8 December 2004. The scene of offence was the office premises of a firm called Popular Builders owned by two Patel brothers – Raman Patel and Dashrath Patel. Some unknown persons entered into the premises and they did not kill anyone but they fired shots which damaged the computer installed in the office. An employee of the firm, who was sitting on the ground floor, where the incident took place, lodged an FIR with Navrangpura Police Station on 8 December 2004 in the city of Ahmedabad. The FIR did not name any one of the assailant, however, it was then discovered that the FIR was substantially a false one and the suspects were known and yet had not been named. As a result of fresh discovery made during the course of investigation, it was Patel Brothers who were ultimately charge-sheeted for filing a false case.

[41] The second case is Hamid Lala murder case in which one Hamid Lala, a protector of marble dealers of Rajasthan against criminal extortion by Sohrabuddin gang was shot dead at a place within the jurisdiction of Ambaji Police Station, Udaipur in the

State of Rajasthan. This incident took place on 31 December 2004. It is a fact that Sohrabuddin after committing Hamid Lala's murder absconded and was not available to Rajasthan Police. Later, it came to the knowledge of the investigating authorities that he had been hiding in a village of Madhya Pradesh. In Hamid Lala murder case, Sohrabuddin's co-accused were Tulsiram Prajapati, Sylvester and one Azam Khan.

[42] It was further pointed out that one Kalimuddin alias Naimuddin, another notorious criminal wanted in many serious cases was residing in the State of Andhra Pradesh along with his sister Saleema Begum. They were acting as informers of Andhra Pradesh Police and they were under their protection. Saleema Begum was residing in government railway quarters. It was Kalimuddin, who seems to have been approached by somebody who invited Sohrabuddin and his wife Kausarbi from their hideout in Madhya Pradesh to Hyderabad. This happened in the middle of November 2005.

[43] It was further highlighted that on or about 22 November 2005, Sohrabuddin and his wife Kausarbi left by a luxury bus for Sangli in Maharashtra. Two tickets for the bus journey were purchased by one Sri Hari. The bus was pursued by police vehicle, two of them were in Tata Sumo vehicles belonging to Andhra Pradesh Police. They were driven by two drivers in the employment of police being ordinary policemen. The Andhra Pradesh police officers who sat in these two vehicles have not been identified despite investigation both by Gujarat Police as well as later by CBI. Sohrabuddin was done to death in an encounter with the police in the early morning of 26 November 2005. In the eventual charge-sheet filed by Gujarat Police on 16 July 2007 against 13 persons it was reported that the encounter was a fake one.

[44] It is the definite case of respondent 2 that the preliminary enquiry was first registered on 27 June 2006. In the charge-sheet filed on 16 July 2007, Gujarat Police found no evidence of any kind to implicate respondent 2 Amit Shah.

[45] Mr Ranjit Kumar and Mr Ram Jethmalani, learned Senior Counsel pointed out that Gujarat Police while investigating Sohrabuddin murder case had conducted a good part of investigation in the State of Andhra Pradesh. Andhra Pradesh Police, however, was determined to yield no clue whatsoever about the role of the State police in the murder. Ms Geeta Johri,

the head of the Gujarat Special Investigating Team had interrogated the potential witnesses but she drew a blank. She was not provided with more materials such as vehicle entry register for further investigation. Gujarat Police headed by Ms Johri had come to the conclusion that it was possible that the couple was accompanied by a "third person" and in all probability that person was Kalimuddin, who had succeeded in getting the couple from Madhya Pradesh to Hyderabad and he handed over the couple to the murdering team which certainly included the Andhra Pradesh officers.

[46] According to the learned Senior Counsel, from all the details, particularly the charge-sheet filed by Gujarat Police which included even senior police officers as accused, there is no need for further investigation by CBI. Even otherwise, according to them, the conduct of CBI does not inspire any confidence in this case. It has become party to a political conspiracy and acting as subordinate police force of the Central Government in sensitive cases having political implications.

[47] If we analyse the allegations of the State and other respondents with reference to the materials placed with the stand taken by CBI, it would be difficult to accept it in its entirety. It is the definite case of CBI that the abduction of Sohrabuddin and Kausarbi and their subsequent murders as well as the murder of Tulsiram Prajapati are one series of acts, so connected together as to form the same transaction under s. 220 CrPC. As rightly pointed out by CBI, if two parts of the same transaction are investigated and prosecuted by different agencies, it may cause failure of justice not only in one case but in other trial as well.

[48] It is further seen that there is substantial material already on record which makes it probable that the prime motive of elimination of Tulsiram Prajapati was that he was a witness to abduction of Sohrabuddin and Kausarbi. Both oral and documentary evidence raise strong suspicion that the encounter was fake and stage-managed as predicted by Tulsiram Prajapati prior to his death in a number of communications. We have already adverted to his complaint to the District Collector, Udaipur, Rajasthan and representation to NHRC, New Delhi. In both the representations Tulsiram Prajapati highlighted about the danger to his life. In fact, NHRC forwarded his representation to the Director General of Police, Gujarat for necessary action.

[49] It is relevant to point out the letter of Shri V.L. Solanki dated 18 December 2006 seeking permission to interrogate Tulsiram Prajapati and Sylvester lodged in Udaipur Jail. With regard to the letter, Ms Geeta Johri, Head of SIT, is alleged to have recorded that even she may be given permission to accompany the IO for interrogation. It was pointed out by CBI that the letter of Shri V.L. Solanki containing the signature of Ms Geeta Johri was not found in the official file. In its place, it was pointed out that a fabricated note dated 5 January 2007 along with a noting of Shri G.C. Raigar dated 6 January 2007/8 January 2007 was found in the file in which it was recorded as under:

> To go to Udaipur to interrogate accused Sylvester and Tulsiram Prajapati (both being allegedly primary witnesses in the case) of whom Tulsi was recently encountered at BK by border range.

If we compare the note and the above record of statement, it shows that each one is self-contradictory, more particularly, the note seeks to interrogate the dead man.

[50] It also cannot be ruled out that the stand taken by CBI that as soon as the State police learnt about the direction of investigation by Ms Geeta Johri, immediate pre-emptive steps have been taken to eliminate Tulsiram Prajapati. CBI has pointed out that the critical document is the note dated 22 May 2007 in the handwriting of Ms Geeta Johri which records as under:

> There is a systematic effort on the part of the State Government supporting the police to tamper with witnesses and evidences …
>
> It was pointed out that the words "State Government supporting" are sought to be struck off and are substituted by "certain agencies including" in place of "State Government supporting". This was pointed out as a direct evidence of systematic effort of the State Government attempting to tamper with the witnesses and evidences.

[51] CBI has also pointed out that Ms Geeta Johri in her note dated 22 May 2007 recorded that:

> … the Government may please therefore be moved to hand over the case to CBI for the purpose of meting out justice to the petitioners and maintaining the image of Gujarat Police …

[52] It is relevant to point out that the FIR recorded by Gujarat Police in Sohrabuddin's case claimed it to be an encounter death and it was only on the intervention and issuance of rule nisi by

this court and filing of eight action-taken reports, SIT informed this court that it was a fake encounter and identified the police officials.

[53] Apart from the above vital information, it is useful to refer that even after the transfer of Sohrabuddin's case to CBI on 12 January 2010, Gujarat Police did not move till May 2010. The first arrest in Tulsiram Prajapati's case was made in May 2010. Further, when CBI laid charge-sheet on 23 July 2010 in Sohrabuddin's case, the State promptly concluded its investigation and filed charge-sheet in Tulsiram Prajapati's case on 30 July 2010. It was also pointed out that this was done only because after repeated requests Gujarat Police handed over the copies of notes and diaries in Tulsiram Prajapati's case to CBI in the month of May 2010.

[54] Another important aspect is that on earlier occasions, Tulsiram Prajapati was produced before the court in Ahmedabad through videoconferencing and he was removed from jail on 27 December 2006 and produced before a court, when ultimately, on 28 December 2006 ie, the next day, he was killed.

[55] According to CBI, the investigation has revealed that Tulsiram Prajapati was the "third person" accompanying Sohrabuddin and Kausarbi on the fateful night of their abduction and subsequent murders in the year 2005. The investigation further revealed that after the abduction of Sohrabuddin and Kausarbi, police personnel of Rajasthan had taken away Tulsiram Prajapati from Valsad on 23 November 2005. However, it was pointed out by CBI that he was shown to have been arrested on 29 November 2005 at Bhilwara by Rajasthan Police.

[56] Nayamuddin Shaikh, in his statement dated 19 February 2010, before CBI has mentioned that they had gone to see off his brother Sohrabuddin, Kausarbi and Tulsiram Prajapati from Indore Bus-stand for Hyderabad and that Sohrabuddin had told him that they would be staying with Kalimuddin in Hyderabad. The above statement of Nayamuddin Shaikh is corroborated by the statement of Rubabbuddin Sheikh dated 18 February 2010 wherein he had stated that Nayamuddin told him that from Indore, Tulsiram Prajapati, friend of Sohrabuddin had also joined them for going to Hyderabad. Rubabbuddin had further stated that when Tulsiram Prajapati was brought from Udaipur to Ujjain for court hearing, Tulsiram Prajapati had told him that he along with Sohrabuddin and Kausarbi had gone to Hyderabad and had stayed with Kalimuddin in Hyderabad.

[57] The statement of Azam Khan dated 26 March 2010 indicates the manner in which the abduction of Sohrabuddin and Kausarbi was planned and executed. Azam Khan in his statement had stated that he and Tulsiram Prajapati were lodged in Udaipur Prison at which time Tulsiram Prajapati told him that on information given by Tulsiram Prajapati, Sohrabuddin, Kausarbi and Tulsiram were abducted from Hyderabad. Among the entire statement of Azam Khan, the relevant part is that Tulsiram Prajapati helped in tracking down Sohrabuddin.

[58] The learned Senior Counsel for CBI, Mr K.T.S. Tulsi has pointed out that since CBI had primarily conducted the investigation in the case of encounter of Sohrabuddin and the murder of Kausarbi, it has so far not launched a full-fledged investigation into the circumstances in which Tulsiram Prajapati was killed. According to him, certain facts have come to the notice of CBI only as part of "larger conspiracy" with regard to which investigation was ordered by this court and it was pointed out that full-fledged investigation by CBI alone can reveal further facts and lead to more direct evidence. Mr K.T.S. Tulsi is right in claiming that the investigation in every criminal case is conducted on the basis of suspicion and reason to believe and to apply the standard of proof beyond doubt at a stage when a full-fledged investigation is yet to be launched.

[59] It is not in dispute that it is the age-old maxim that justice must not only be done but must be seen to be done. The fact that in the case of murder of an associate of Tulsiram Prajapati, senior police officials and a senior politician were accused may shake the confidence of public in investigation conducted by the State police. If the majesty of the rule of law is to be upheld and if it is to be ensured that the guilty are punished in accordance with law notwithstanding their status and authority which they might have enjoyed, it is desirable to entrust the investigation to CBI.

[60] As stated earlier, it is the specific claim of the State of Gujarat that they have conducted a fair and impartial investigation into the killing of Tulsiram Prajapati, however, analysis of the materials which we have already discussed shows several lacunae on the part of the investigation by the State Government. It is relevant to point out that much before the incident dated 28 December 2006 which happened in Village Chappri in Banaskantha District of the State of Gujarat in which Tulsiram

Prajapati was allegedly shot in an encounter while he had opened fire on the police party, who was on the lookout for him to apprehend him, after he had allegedly escaped from a running train while being taken back to Rajasthan from Gujarat where he was stated to be produced in a court proceeding, Tulsiram Prajapati lodged two complaints in written, one to the Collector, Udaipur and another addressed to the Chairman, NHRC, New Delhi expressing the apprehension that he is likely and going to be killed by Gujarat and Rajasthan Police. In fact, on 28 December 2006, Tulsiram Prajapati has been killed in the fake encounter which has now been admitted to be a fake encounter after a gap of 3½ years.

[61] In *Mohd. Anis v. Union of India*[13] it has been observed by this court that:

> 5. ... Fair and impartial investigation by an independent agency, not involved in the controversy, is the demand of public interest. If the investigation is by an agency which is allegedly privy to the dispute, the credibility of the investigation will be doubted and that will be contrary to the public interest as well as the interest of justice." (SCC p. 148, para 5)

> 2. ... Doubts were expressed regarding the fairness of the investigation as it was feared that as the local police was alleged to be involved in the encounters, the investigation by an officer of the U.P. Cadre may not be impartial. (SCC p. 147, para 2)

[62] In another decision of this court in *R.S. Sodhi v. State of U.P.*[8] the following conclusion is relevant: (SCC pp. 144-45, para 2)

> 2. ... We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility.

13. 1994 Supp (1) SCC 145 : 1994 SCC (Cri) 251.

8. 1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248

A However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book. We direct accordingly.

[63] In both these decisions, this court refrained from expressing any opinion on the allegations made by either side but thought it C wise to have the incident investigated by an independent agency like CBI so that it may bear credibility. This court felt that no matter how faithfully and honestly the local police may carry out the investigation, the same will lack credibility as allegations were directed against them. This court, therefore, thought it both D desirable and advisable and in the interest of justice to entrust the investigation to CBI so that it may complete the investigation at an early date. It was clearly stated that in so ordering, no reflection either on the local police or the State Government was intended. This Court merely acted in public interest.

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[64] The above decisions and the principles stated therein have been referred to and followed by this court in *Rubabbuddin Sheikh*[1] where also it was held that considering the fact that the allegations have been levelled against high-level police officers, F despite the investigation made by the police authorities of the State of Gujarat, ordered investigation by CBI. Without entering into the allegations levelled by either of the parties, we are of the view that it would be prudent and advisable to transfer the investigation to an independent agency. It is trite law that the G accused persons do not have a say in the matter of appointment of an investigation agency. The accused persons cannot choose as to which investigation agency must investigate the alleged offence committed by them.

H **[65]** In view of our discussions and submission of the learned counsel on either side and keeping in mind the earlier directions given by this court, although, charge-sheet has been filed by the State of Gujarat after a gap of 3½ years after the incident, that

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1. *Rubabbuddin Sheikh v. State of Gujarat,* (2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006.

too after pronouncement of judgment in *Rubabbuddin case*[1] and considering the nature of crime that has been allegedly committed not by any third party but by the police personnel of the State of Gujarat, we are satisfied that the investigation conducted and concluded in the present case by the State police cannot be accepted. In view of various circumstances highlighted and in the light of the involvement of police officials of the State of Gujarat and police officers of two other States ie, Andhra Pradesh and Rajasthan, it would not be desirable to allow the Gujarat State Police to continue with the investigation, accordingly, to meet the ends of justice and in the public interest, we feel that CBI should be directed to take the investigation.

Submission Of Report By CBI To This Court And Subsequent Monitoring

[66] The other question relates to submission of a report by CBI to this court and further monitoring in the case. Though in *Rubabbuddin Sheikh case*[1], this court directed CBI that after investigation submit a report to this court and thereafter, further necessary orders will be passed in accordance with the said report, in view of the principles laid down in a series of decisions by this court, we are not persuaded to accept the course relating to submission of report to this court and monitoring thereafter.

[67] In *Vineet Narain*[2] this court held as under: (SCC p. 201, para 5)

> 5. In case of persons against whom a *prima facie* case is made out and a charge-sheet is filed in the competent court, it is that court which will then deal with that case on merits, in accordance with law.

[68] In *Sushil Kumar Modi*[3] this court observed that: (SCC p. 662, para 5)

1. *Rubabbuddin Sheikh v. State of Gujarat,* (2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006.
2. *Vineet Narain v. Union of India,* (1996) 2 SCC 199 : 1996 SCC (Cri) 264.
3. *Union of India v. Sushil Kumar Modi,* (1998) 8 SCC 661 : 1999 SCC (Cri) 84.

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> 5. … the monitoring process in the High Court in respect of the particular matter had come to an end with the filing of the charge-sheet in the Special Court and that the matter relating to execution of the warrant issued by the Special Court against Shri Laloo Prasad Yadav was a matter only within the competence of the Special Court so that there was no occasion for the High Court to be involved in any manner with the execution of the warrant.

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By relying on the decision in *Vineet Narain case*, this court reiterated that once a charge-sheet is filed in the competent court after completion of the investigation, the process of monitoring by this court for the purpose of making CBI and other investigating agencies concerned perform their function of investigating into the offences concerned comes to an end; and thereafter it is only the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused, including matters falling within the scope of s. 173(8) of the Code.

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[69] In *M.C. Mehta (Taj Corridor Scam) v. Union of India*[14] this court again reiterated the same principle. The following conclusion is relevant: (SCC p. 131, para 30)

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> 30. At the outset, we may state that this Court has repeatedly emphasised in the above judgments that in Supreme Court monitored cases this Court is concerned with ensuring proper and honest performance of its duty by CBI and that this Court is not concerned with the merits of the accusations in investigation, which are to be determined at the trial on the filing of the charge-sheet in the competent court, according to the ordinary procedure prescribed by law.

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After saying so, this court concluded: (SCC p. 133, para 34)

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> 34. We, accordingly, direct CBI to place the evidence/material collected by the investigating team along with the report of the SP as required under Section 173(2) CrPC before the court/ Special Judge concerned who will decide the matter in accordance with law.

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[70] The above decisions make it clear that though this court is competent to entrust the investigation to any independent agency, once the investigating agency complete their function of investigating into the offences, it is the court in which the charge-sheet is filed which is to deal with all matters relating to the trial

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14. (2007) 1 SCC 110 : (2007) 1 SCC (Cri) 264.

of the accused including matters falling within the scope of s. 173(8) of the Code. Thus, generally, this court may not require further monitoring of the case/investigation. However, we make it clear that if any of the parties including CBI require any further direction, they are free to approach this court by way of an application.

Conclusion

[71] In view of the above discussion, the police authorities of the Gujarat State are directed to hand over all the records of the present case to CBI within two weeks from this date and CBI shall investigate all aspects of the case relating to the killing of Tulsiram Prajapati and file a report to the court concerned/Special Court having jurisdiction within a period of six months from the date of taking over of the investigation from the State police authorities. We also direct the police authorities of the State of Gujarat, Rajasthan and Andhra Pradesh to cooperate with the CBI Authorities in conducting the investigation.

[72] It is made clear that any observation made in this order is only for the limited purpose of deciding the issue whether investigation is to be handed over to CBI or not and shall not be construed as expression of opinion on the merits of the case. Though the petitioner has prayed for compensation for the killing of her son, inasmuch as we direct CBI to investigate and submit a report before the court concerned/Special Court within six months, depending on the outcome of the investigation, the petitioner is permitted to move the said court for necessary direction for compensation and it is for the said court to pass appropriate orders in accordance with law. The writ petition is allowed on the above terms.